

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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English only

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
(CDPC)

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
(PC-OC)

***Amendments proposed by the Netherlands***

**Draft questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing.**

1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. asset sharing?

(Please specify)

2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, *what are the possibilities in your national system? And have you encountered any legal or practical difficulties? Please specify you answer as regards to:*

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. *returning of the assets for victims?*
- e. asset sharing

(Please specify)

### *3. Introduction*

*A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that Member States are not always able to ensure the implementation of a request grounded on a so-called value based confiscation system. This system is described in both conventions as a system with which it is possible to cooperate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.*

*Question: Could the competences mentioned in question 2 be exercised in the case of a request grounded on the value based confiscation system?*

*Please specify you answer as regards to:*

- a. *Search and seizure of proceeds of crime*
- b. *confiscation of proceeds of crime?*
- c. *management of seized and confiscated assets?*
- d. *returning of the assets for the victims?*
- e. *asset sharing*

*(Please specify)*

*4. Several Member States recognize the possibility of seizure and confiscation of assets which belong de facto to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.*

*Do you have the possibility to execute such a request? If not, for which reasons, and if so, under which conditions?*

*Please specify you answer as regards to:*

- a. Search and seizure of proceeds of crime*
- b. confiscation of proceeds of crime?*
- c. management of seized and confiscated assets?*
- d. returning of the assets for the victims?*
- e. asset sharing*

5. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning of the assets for the victims?*
- d. asset sharing?

(Please specify)

6. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

*Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:*

- a. The information gathering phase, during which criminal information is often requested for use within a NCB proceeding*
- b. seizure of proceeds of crime?*
- c. confiscation of proceeds of crime?*
- d. management of seized and confiscated assets?*
- e. returning of the asset for the Victims?*
- f. asset sharing?*

7. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

8. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?

9. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? *If so, under which conditions?*

10. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds

of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned)